

Introduced by Senator Kehoe

February 18, 2005

An act to amend Sections 790.03, 2051.5, 2071, 10089.82, 14028, 14029, 14035, 14062, 15011, 15027, 15027.1, and 15040 of, and to add Sections 14028.1, 14061.5, 15018.5, 15027.5, 15028.7, and 15039.5 to, and to add Chapter 11.7 (commencing with Section 679.95) to Part 1 of Division 1 of, the Insurance Code, relating to homeowners' insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 518, as introduced, Kehoe. Homeowners' insurance: insurance adjusters.

Existing law generally regulates homeowners' and other insurance relating to real and personal property.

This bill would require each insurer insuring real and personal property to submit to the Insurance Commissioner biannually specified information regarding the insurer's loss experience, and would set forth monetary penalties for violating this requirement.

Existing law prohibits specified actions defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.

This bill would add failing to provide, free of charge, within a certain period after a request from the insured, a complete copy of an insured's insurance policy.

Existing law prohibits an insurer, with respect to certain homeowners' insurance policies, from placing upon an insured a time limit of less than 12 months from the date that the first payment toward the actual cash value is made in order for the insured to collect the full replacement cost of the loss, subject to the policy limit.

This bill would prohibit an insurer, in the event of a loss relating to a state of emergency, as defined, from placing upon an insured a time limit of less than 24 months from the date of loss for coverage for additional living expenses.

Existing law prohibits a suit or action for the recovery of a claim under a homeowners' insurance policy unless commenced within 12 months after inception of the loss.

This bill would change that period to 2 years.

Existing law sets forth the grounds for denying, suspending, or revoking a license to act as an insurance adjuster or public insurance adjuster.

This bill would make specified changes to the grounds for denying, suspending, or revoking those licenses.

Existing law requires that a contract between a public insurance adjuster and a client include specified provisions and information. Existing law allows a client to cancel a contract of this type within 3 business days after signing the contract.

This bill would require that certain additional information relating to the insured, the insurer, and the adjuster be included in such a contract, and would prohibit a contract of this type from containing specified provisions. It would require that a public insurance adjuster provide the client with a written disclosure prior to the signing of the contract, as specified. The bill would allow the client to cancel the contract within 10 business days of signing the contract.

The bill would impose additional regulatory requirements on public insurance adjusters relating to disclosures and receiving money on behalf of an insured.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 11.7 (commencing with Section 679.95)
2 is added to Part 1 of Division 1 of the Insurance Code, to read:

3
4 CHAPTER 11.7. REPORTING REQUIREMENTS FOR CERTAIN
5 PROPERTY INSURERS

6
7 679.95. (a) This section applies to all admitted insurers
8 licensed to issue and insuring real or personal property in the

1 state, including California Fair Access to Insurance
2 Requirements (FAIR) Plan policies.

3 (b) Each insurer subject to this section shall submit biannually
4 a record of loss experience, per exposure, for each geographic
5 area, including that statistical data by ZIP Code area, to the
6 commissioner for examination. Loss experience shall include
7 separate loss data for each type of coverage. An insurer may
8 satisfy its obligation to report statistical data for each type of
9 coverage by providing its loss experience data to a rating or
10 advisory organization for submission to the commissioner. This
11 data may be made available to the public by the commissioner
12 annually after examination. The commissioner shall release the
13 data only in aggregate form by ZIP Code. Except as otherwise
14 provided in this section, all information reported to the
15 department pursuant to this section shall be confidential.

16 (c) A record of loss experience for the geographic area shall
17 include the breakdown of actual loss experience statistics per
18 exposure by ZIP Code area, as designated by the United States
19 Postal Service, within each geographic area.

20 (d) Any person or entity that fails to comply with a data call
21 required by the department pursuant to this section, or with a
22 final order of the commissioner under this section, shall be liable
23 to the state for a civil penalty in an amount not exceeding five
24 thousand dollars (\$5,000) for each 30-day period that the person
25 is not in compliance, unless the failure to comply is willful, in
26 which case the civil penalty shall be in an amount not to exceed
27 ten thousand dollars (\$10,000) for each 30-day period that the
28 person or entity is not in compliance, not to exceed an aggregate
29 amount of one hundred thousand dollars (\$100,000). The
30 commissioner shall collect the penalty and may bring an action in
31 the name of the people of the State of California to enforce
32 collection. The penalties imposed under this section shall be in
33 addition to any other penalties allowed by law.

34 SEC. 2. Section 790.03 of the Insurance Code is amended to
35 read:

36 790.03. The following are hereby defined as unfair methods
37 of competition and unfair and deceptive acts or practices in the
38 business of insurance.

39 (a) Making, issuing, circulating, or causing to be made, issued
40 or circulated, any estimate, illustration, circular or statement

1 misrepresenting the terms of any policy issued or to be issued or
2 the benefits or advantages promised thereby or the dividends or
3 share of the surplus to be received thereon, or making any false
4 or misleading statement as to the dividends or share of surplus
5 previously paid on similar policies, or making any misleading
6 representation or any misrepresentation as to the financial
7 condition of any insurer, or as to the legal reserve system upon
8 which any life insurer operates, or using any name or title of any
9 policy or class of policies misrepresenting the true nature thereof,
10 or making any misrepresentation to any policyholder insured in
11 any company for the purpose of inducing or tending to induce the
12 policyholder to lapse, forfeit, or surrender his or her insurance.

13 (b) Making or disseminating or causing to be made or
14 disseminated before the public in this state, in any newspaper or
15 other publication, or any advertising device, or by public outcry
16 or proclamation, or in any other manner or means whatsoever,
17 any statement containing any assertion, representation or
18 statement with respect to the business of insurance or with
19 respect to any person in the conduct of his or her insurance
20 business, which is untrue, deceptive, or misleading, and which is
21 known, or which by the exercise of reasonable care should be
22 known, to be untrue, deceptive, or misleading.

23 (c) Entering into any agreement to commit, or by any
24 concerted action committing, any act of boycott, coercion or
25 intimidation resulting in or tending to result in unreasonable
26 restraint of, or monopoly in, the business of insurance.

27 (d) Filing with any supervisory or other public official, or
28 making, publishing, disseminating, circulating, or delivering to
29 any person, or placing before the public, or causing directly or
30 indirectly, to be made, published, disseminated, circulated,
31 delivered to any person, or placed before the public any false
32 statement of financial condition of an insurer with intent to
33 deceive.

34 (e) Making any false entry in any book, report, or statement of
35 any insurer with intent to deceive any agent or examiner lawfully
36 appointed to examine into its condition or into any of its affairs,
37 or any public official to whom the insurer is required by law to
38 report, or who has authority by law to examine into its condition
39 or into any of its affairs, or, with like intent, willfully omitting to

1 make a true entry of any material fact pertaining to the business
2 of the insurer in any book, report, or statement of the insurer.

3 (f) Making or permitting any unfair discrimination between
4 individuals of the same class and equal expectation of life in the
5 rates charged for any contract of life insurance or of life annuity
6 or in the dividends or other benefits payable thereon, or in any
7 other of the terms and conditions of the contract.

8 This subdivision shall be interpreted, for any contract of
9 ordinary life insurance or individual life annuity applied for and
10 issued on or after January 1, 1981, to require differentials based
11 upon the sex of the individual insured or annuitant in the rates or
12 dividends or benefits, or any combination thereof. This
13 requirement is satisfied if those differentials are substantially
14 supported by valid pertinent data segregated by sex, including,
15 but not necessarily limited to, mortality data segregated by sex.

16 However, for any contract of ordinary life insurance or
17 individual life annuity applied for and issued on or after January
18 1, 1981, but before the compliance date, in lieu of those
19 differentials based on data segregated by sex, rates, or dividends
20 or benefits, or any combination thereof, for ordinary life
21 insurance or individual life annuity on a female life may be
22 calculated as follows: (a) according to an age not less than three
23 years nor more than six years younger than the actual age of the
24 female insured or female annuitant, in the case of a contract of
25 ordinary life insurance with a face value greater than five
26 thousand dollars (\$5,000) or a contract of individual life annuity;
27 and (b) according to an age not more than six years younger than
28 the actual age of the female insured, in the case of a contract of
29 ordinary life insurance with a face value of five thousand dollars
30 (\$5,000) or less. "Compliance date" as used in this paragraph
31 shall mean the date or dates established as the operative date or
32 dates by future amendments to this code directing and
33 authorizing life insurers to use a mortality table containing
34 mortality data segregated by sex for the calculation of adjusted
35 premiums and present values for nonforfeiture benefits and
36 valuation reserves as specified in Sections 10163.5 and 10489.2
37 or successor sections.

38 Notwithstanding the provisions of this subdivision, sex-based
39 differentials in rates or dividends or benefits, or any combination
40 thereof, shall not be required for (1) any contract of life insurance

1 or life annuity issued pursuant to arrangements which may be
2 considered terms, conditions, or privileges of employment as
3 these terms are used in Title VII of the Civil Rights Act of 1964
4 (Public Law 88-352), as amended, and (2) tax sheltered annuities
5 for employees of public schools or of tax exempt organizations
6 described in Section 501(c)(3) of the Internal Revenue Code.

7 (g) Making or disseminating, or causing to be made or
8 disseminated, before the public in this state, in any newspaper or
9 other publication, or any other advertising device, or by public
10 outcry or proclamation, or in any other manner or means
11 whatever, whether directly or by implication, any statement that
12 a named insurer, or named insurers, are members of the
13 California Insurance Guarantee Association, or insured against
14 insolvency as defined in Section 119.5. This subdivision shall not
15 be interpreted to prohibit any activity of the California Insurance
16 Guarantee Association or the commissioner authorized, directly
17 or by implication, by Article 14.2 (commencing with Section
18 1063).

19 (h) Knowingly committing or performing with such frequency
20 as to indicate a general business practice any of the following
21 unfair claims settlement practices:

22 (1) Misrepresenting to claimants pertinent facts or insurance
23 policy provisions relating to any coverages at issue.

24 (2) Failing to acknowledge and act reasonably promptly upon
25 communications with respect to claims arising under insurance
26 policies.

27 (3) Failing to adopt and implement reasonable standards for
28 the prompt investigation and processing of claims arising under
29 insurance policies.

30 (4) Failing to affirm or deny coverage of claims within a
31 reasonable time after proof of loss requirements have been
32 completed and submitted by the insured.

33 (5) Not attempting in good faith to effectuate prompt, fair, and
34 equitable settlements of claims in which liability has become
35 reasonably clear.

36 (6) Compelling insureds to institute litigation to recover
37 amounts due under an insurance policy by offering substantially
38 less than the amounts ultimately recovered in actions brought by
39 the insureds, when the insureds have made claims for amounts
40 reasonably similar to the amounts ultimately recovered.

1 (7) Attempting to settle a claim by an insured for less than the
2 amount to which a reasonable person would have believed he or
3 she was entitled by reference to written or printed advertising
4 material accompanying or made part of an application.

5 (8) Attempting to settle claims on the basis of an application
6 which was altered without notice to, or knowledge or consent of,
7 the insured, his or her representative, agent, or broker.

8 (9) Failing, after payment of a claim, to inform insureds or
9 beneficiaries, upon request by them, of the coverage under which
10 payment has been made.

11 (10) Making known to insureds or claimants a practice of the
12 insurer of appealing from arbitration awards in favor of insureds
13 or claimants for the purpose of compelling them to accept
14 settlements or compromises less than the amount awarded in
15 arbitration.

16 (11) Delaying the investigation or payment of claims by
17 requiring an insured, claimant, or the physician of either, to
18 submit a preliminary claim report, and then requiring the
19 subsequent submission of formal proof of loss forms, both of
20 which submissions contain substantially the same information.

21 (12) Failing to settle claims promptly, where liability has
22 become apparent, under one portion of the insurance policy
23 coverage in order to influence settlements under other portions of
24 the insurance policy coverage.

25 (13) Failing to provide promptly a reasonable explanation of
26 the basis relied on in the insurance policy, in relation to the facts
27 or applicable law, for the denial of a claim or for the offer of a
28 compromise settlement.

29 (14) Directly advising a claimant not to obtain the services of
30 an attorney.

31 (15) Misleading a claimant as to the applicable statute of
32 limitations.

33 (16) Delaying the payment or provision of hospital, medical,
34 or surgical benefits for services provided with respect to acquired
35 immune deficiency syndrome or AIDS-related complex for more
36 than 60 days after the insurer has received a claim for those
37 benefits, where the delay in claim payment is for the purpose of
38 investigating whether the condition preexisted the coverage.
39 However, this 60-day period shall not include any time during

1 which the insurer is awaiting a response for relevant medical
2 information from a health care provider.

3 (i) Canceling or refusing to renew a policy in violation of
4 Section 676.10.

5 (j) *Failing to provide, free of charge, within 15 calendar days*
6 *of receipt of a request from the insured, a complete copy of an*
7 *insured's insurance policy, including the policy declarations*
8 *page, all endorsements and riders, and a clear statement of*
9 *policy limits per coverage and applicable deductibles per*
10 *coverage.*

11 SEC. 3. Section 2051.5 of the Insurance Code is amended to
12 read:

13 2051.5. (a) Under an open policy that requires payment of the
14 replacement cost for a loss, the measure of indemnity is the
15 amount that it would cost the insured to repair, rebuild, or replace
16 the thing lost or injured, without a deduction for physical
17 depreciation, or the policy limit, whichever is less.

18 If the policy requires the insured to repair, rebuild, or replace
19 the damaged property in order to collect the full replacement
20 cost, the insurer shall pay the actual cash value of the damaged
21 property, as defined in Section 2051, until the damaged property
22 is repaired, rebuilt, or replaced. Once the property is repaired,
23 rebuilt, or replaced, the insurer shall pay the difference between
24 the actual cash value payment made and the full replacement cost
25 reasonably paid to replace the damaged property, up to the limits
26 stated in the policy.

27 (b) ~~No~~ (1) *Except as provided in paragraph (2), no time limit*
28 *of less than 12 months from the date that the first payment*
29 *toward the actual cash value is made shall be placed upon an*
30 *insured in order to collect the full replacement cost of the loss,*
31 *subject to the policy limit. Additional extensions of six months*
32 *shall be provided to policyholders for good cause. In the event of*
33 *a loss relating to a "state of emergency," as defined in Section*
34 *8558 of the Government Code, no time limit of less than 24*
35 *months from the date that the first payment toward the actual*
36 *cash value is made shall be placed upon the insured in order to*
37 *collect the full replacement cost of the loss, subject to the policy*
38 *limit. Nothing in this section shall prohibit the insurer from*
39 *allowing the insured additional time to collect the full*
40 *replacement cost.*

(2) *In the event of a loss relating to a state of emergency, as defined in Section 8558 of the Government Code, no time limit of less than 24 months from the date of loss shall be placed upon the insured for coverage for additional living expenses.*

(c) In the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision that limits or denies payment of the replacement cost in the event the insured decides to rebuild or replace the property at a location other than the insured premises. However, the measure of indemnity shall be based upon the replacement cost of the insured property and shall not be based upon the cost to repair, rebuild, or replace at a location other than the insured premises.

(d) Nothing in this section shall prohibit an insurer from restricting payment in cases of suspected fraud.

(e) The changes made to this section by the act that added this subdivision shall be implemented by an insurer on and after the effective date of that act, except that an insurer shall not be required to modify policy forms to be consistent with those changes until July 1, 2005. On and after July 1, 2005, all policy forms used by an insurer shall reflect those changes.

SEC. 4. Section 2071 of the Insurance Code is amended to read:

2071. (a) The following is adopted as the standard form of fire insurance policy for this state:

California Standard Form Fire Insurance Policy

No.

[Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.]

[Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.]

In consideration of the provisions and stipulations herein or added hereto and of _____ dollars premium this company, for the term of _____

from the _____ day of _____, 20 _____
to the _____ day of _____, 20 _____

At 12:01 a.m.,
standard time,

IN WITNESS WHEREOF, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this company at

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included

This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that the fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this company be liable for loss by theft.

Other insurance

Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance

Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring (a) while the hazard is increased by any means within the control or knowledge of the insured; or (b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; or (c) as a result of explosion or riot, unless fire ensues, and in that event for loss by fire only.

Other perils or subjects

Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

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suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of the mortgagee may be added hereto by agreement in writing.

Pro rata liability

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs

The insured shall give written notice to this company of any loss without unnecessary delay, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within 60 days after the loss, unless the time is extended in writing by this company, the insured shall render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required and obtainable, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

1 The insured, as often as may be reasonably required and
2 subject to the provisions of Section 2071.1, shall exhibit to any
3 person designated by this company all that remains of any
4 property herein described, and submit to examinations under oath
5 by any person named by this company, and subscribe the same;
6 and, as often as may be reasonably required, shall produce for
7 examinations all books of account, bills, invoices, and other
8 vouchers, or certified copies thereof if the originals be lost, at any
9 reasonable time and place as may be designated by this company
10 or its representative, and shall permit extracts and copies thereof
11 to be made. The insurer shall inform the insured that tax returns
12 are privileged against disclosure under applicable law but may be
13 necessary to process or determine the claim.

14 The insurer shall notify every claimant that they may obtain,
15 upon request, copies of claim-related documents. For purposes of
16 this section, “claim-related documents” means all documents that
17 relate to the evaluation of damages, including, but not limited to,
18 repair and replacement estimates and bids, appraisals, scopes of
19 loss, drawings, plans, reports, third party findings on the amount
20 of loss, covered damages, and cost of repairs, and all other
21 valuation, measurement, and loss adjustment calculations of the
22 amount of loss, covered damage, and cost of repairs. However,
23 attorney work product and attorney-client privileged documents,
24 and documents that indicate fraud by the insured or that contain
25 medically privileged information, are excluded from the
26 documents an insurer is required to provide pursuant to this
27 section to a claimant. Within 15 calendar days after receiving a
28 request from an insured for claim-related documents, the insurer
29 shall provide the insured with copies of all claim-related
30 documents, except those excluded by this section. Nothing in this
31 section shall be construed to affect existing litigation discovery
32 rights.

33 Appraisal

34 In case the insured and this company shall fail to agree as to
35 the actual cash value or the amount of loss, then, on the written
36 request of either, each shall select a competent and disinterested
37 appraiser and notify the other of the appraiser selected within 20
38 days of the request. Where the request is accepted, the appraisers
39 shall first select a competent and disinterested umpire; and failing
40 for 15 days to agree upon the umpire, then, on request of the

insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. Appraisal proceedings are informal unless the insured and this company mutually agree otherwise. For purposes of this section, “informal” means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and no court reporter shall be used for the proceedings. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by the parties equally. In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either the insured or this company but shall not be compelled.

Adjusters

If, within a six-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report. For purposes of this section, a written status report shall include a summary of any decisions or actions that are substantially related to the disposition of a claim, including, but not limited to, the amount of losses to structures or contents, the retention or consultation of design or construction professionals, the amount of coverage for losses to structures or contents and all items of dispute.

Company’s options

It shall be optional with this company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

1 Abandonment

2 There can be no abandonment to this company of any property.

4 When loss payable

5 The amount of loss for which this company may be liable shall
6 be payable 60 days after proof of loss, as herein provided, is
7 received by this company and ascertainment of the loss is made
8 either by agreement between the insured and this company
9 expressed in writing or by the filing with this company of an
10 award as herein provided.

12 Suit

13 No suit or action on this policy for the recovery of any claim
14 shall be sustainable in any court of law or equity unless all the
15 requirements of this policy shall have been complied with, and
16 unless commenced within ~~12 months~~ *two years* next after
17 inception of the loss.

19 Subrogation

20 This company may require from the insured an assignment of
21 all right of recovery against any party for loss to the extent that
22 payment therefor is made by this company.

24 (b) Any amendments to this section by the enactment of
25 Senate Bill 658 of the 2001–02 Regular Session shall govern a
26 policy utilizing the form provided in subdivision (a) when that
27 policy is originated or renewed on and after January 1, 2002.

28 (c) The amendments to this section made by the act adding
29 this subdivision shall govern a policy utilizing the form provided
30 in subdivision (a) when that policy is originated or renewed on
31 and after January 1, 2004.

32 SEC. 5. Section 10089.82 of the Insurance Code is amended
33 to read:

34 10089.82. (a) An insured may not be required to use the
35 department's mediation process. An insurer may not be required
36 to use the department's mediation process, except as provided in
37 Section 10089.75.

38 (b) Neither the insurer nor the insured is required to accept an
39 agreement proposed during the mediation.

1 (c) If the parties agree to a settlement agreement, the insured
2 will have three business days to rescind the agreement.
3 Notwithstanding Chapter 2 (commencing with Section 1115) of
4 Division 9 of the Evidence Code, if the insured rescinds the
5 agreement, it may not be admitted in evidence or disclosed unless
6 the insured and all other parties to the agreement expressly agree
7 to its disclosure. If the agreement is not rescinded by the insured,
8 it is binding on the insured and the insurer, and acts as a release
9 of all specific claims for damages known at the time of the
10 mediation presented and agreed upon in the mediation
11 conference. If counsel for the insured is present at the mediation
12 conference and a settlement is agreed upon that is signed by the
13 insured's counsel, the agreement is immediately binding on the
14 insured and may not be rescinded.

15 (d) This section does not affect rights under existing law for
16 claims for damage that were undetected at the time of the
17 settlement conference.

18 (e) All settlements reached as a result of department-referred
19 mediation shall address only those issues raised for the purpose
20 of resolution. Settlements and any accompanying releases are not
21 effective to settle or resolve any claim or dispute not addressed
22 by the mediator for the purpose of resolution, nor any claim that
23 the insured may have related to the insurer's conduct in handling
24 the claim. However, for mediations conducted pursuant to
25 subdivision (b) of Section 10089.70, the insurer and insured may
26 agree to a complete settlement and release of all disputes related
27 to the claim, including any claim the insured may have related to
28 the insurer's conduct in handling the claim, provided the legal
29 effect of the release is disclosed and fully explained to the
30 claimant by the mediator.

31 Referral to mediation or the pendency of a mediation under this
32 article is not a basis to prevent or stay the filing of civil litigation
33 arising in whole or in part out of the same facts. Any applicable
34 statute of limitations *or limitation on the insured's right to sue as*
35 *set forth in Section 2071* is tolled for the number of days
36 beginning from the notification date to the insurer pursuant to
37 Section 10089.72, until the date on which the mediation is either
38 completed or declined, or the date on which the insured fails to
39 appear for a scheduled mediation for the second time, or, in the

1 event that a settlement is completed, the expiration of any
2 applicable three business day cooling off period.

3 SEC. 6. Section 14028 of the Insurance Code is amended to
4 read:

5 14028. After a hearing the commissioner may deny a license
6 unless the application makes a showing satisfactory to the
7 commissioner that the applicant, if an individual, has not, or if
8 the applicant is a person other than an individual, that its
9 manager and each of its officers and partners have not:

10 (a) Committed any acts or crimes constituting grounds for
11 denial of licensure under Section 480 of the Business and
12 Professions Code.

13 (b) Been refused a license under this chapter or had a license
14 revoked.

15 (c) Been an officer, partner, or manager of any person who has
16 been refused a license under this chapter or whose license has
17 been revoked.

18 (d) While unlicensed committed, or aided and abetted the
19 commission of, any act for which a license is required by this
20 chapter.

21 *(e) Committed any act or crime constituting grounds for*
22 *denial of license under Section 1668.*

23 SEC. 7. Section 14028.1 is added to the Insurance Code, to
24 read:

25 14028.1. The commissioner may, without hearing, deny a
26 license if the applicant has committed any act or crime
27 constituting grounds for denial of license under Section 1669.

28 SEC. 8. Section 14029 of the Insurance Code is amended to
29 read:

30 14029. (a) The business of each licensee shall be operated
31 under the active direction, control, charge, or management, in
32 this state, of the licensee, if the licensee is qualified, or the person
33 who has qualified to act as the licensee's manager, if the licensee
34 is not qualified.

35 (b) No person shall act as a manager of a licensee until he or
36 she has complied with each of the following:

37 (1) Demonstrated his or her qualifications by a written or oral
38 examination, or a combination of both, if required by the
39 commissioner.

1 (2) Made a satisfactory showing to the commissioner that he
2 or she has the qualifications prescribed by Section 14025 and that
3 none of the facts stated in Section 14028 *or 14028.5* exist as to
4 him or her.

5 (c) If the manager, who has qualified as provided in this
6 section, ceases for any reason whatsoever to be connected with
7 the licensee to whom the license is issued, the licensee shall
8 notify the commissioner in writing 30 days from the cessation. If
9 notice is given, the license shall remain in force for a reasonable
10 length of time to be determined by the rules of the commissioner
11 pending the qualifications, as provided in this chapter, of another
12 manager. If the licensee fails to notify the commissioner within
13 the 30-day period, his or her license shall be subject to
14 suspension or revocation and may be reinstated only upon the
15 filing of an application for reinstatement, payment of the
16 reinstatement fee, if any is due, and the qualification of a
17 manager as provided herein.

18 (d) Every manager shall renew his or her authority by
19 satisfying the requirements of Article 8 (commencing with
20 Section 14090).

21 SEC. 9. Section 14035 of the Insurance Code is amended to
22 read:

23 14035. A licensee shall, within 30 days after such change,
24 notify the department of any change of his or her address and of
25 any change in the officers or partners of such licensee. The
26 principal place of business may be at a home or at a business
27 address, but it shall be the place at which the licensee maintains a
28 permanent office.

29 Applications, on forms prescribed by the commissioner, shall
30 be submitted by all new officers or partners. The commissioner
31 may suspend or revoke a license issued under this chapter if he or
32 she determines that at the time the person became an officer or
33 partner of a licensee, any of the facts stated in Section 14028 *or*
34 *14028.5* existed as to such person.

35 SEC. 10. Section 14061.5 is added to the Insurance Code, to
36 read:

37 14061.5. The commissioner may, without hearing, suspend or
38 revoke a license issued under this chapter, or may issue a
39 restricted license, if he or she determines that the licensee has

1 committed any act or crime constituting grounds for denial of
2 license under Section 14028.1.

3 SEC. 11. Section 14062 of the Insurance Code is amended to
4 read:

5 14062. The record of conviction, or a certified copy thereof,
6 shall be conclusive evidence of ~~such~~ *the* conviction, as that term
7 is used in this article or *in* Section 14028 *or* 14028.5.

8 A plea or verdict of guilty or a conviction following a plea of
9 nolo contendere is deemed to be a conviction within the meaning
10 of this article or *of* Section 14028 *or* 14028.5. The commissioner
11 may order the license suspended or revoked, or may decline to
12 issue a license, when the time for appeal has elapsed, or the
13 judgment of conviction has been affirmed on appeal or when an
14 order granting probation is made suspending the imposition of
15 sentence, irrespective of a subsequent order under the provisions
16 of Section 1203.4 of the Penal Code allowing such person to
17 withdraw his or her plea of guilty and to enter a plea of not
18 guilty, or setting aside the verdict of guilty, or dismissing the
19 accusation, information, or indictment.

20 SEC. 12. Section 15011 of the Insurance Code is amended to
21 read:

22 15011. Before an application for a license is granted, the
23 applicant shall meet all of the following:

24 (a) Be at least 18 years of age.

25 (b) Be a bona fide resident of the State of California.

26 (c) Must be of good character and shall not have committed
27 acts or crimes constituting grounds for denial of licensure under
28 Section 1668 *or* 1669.

29 (d) Shall have had sufficient experience, or special education
30 or training, or both, in the handling of loss claims under
31 insurance contracts as determined by regulations adopted by the
32 commissioner, and is competent to transact business and
33 discharge the responsibilities of a public insurance adjuster in
34 such a manner as to safeguard the interests of the public.

35 (e) Must maintain an office in the State of California with
36 public access during regular business hours.

37 (f) Pass an exam given by the commissioner in regard to
38 property loss adjusting.

1 (g) Post a surety bond executed by a surety company
2 authorized to do business in this state in the sum of five thousand
3 dollars (\$5,000).

4 (h) Comply with any other qualifications as required by the
5 commissioner.

6 SEC. 13. Section 15018.5 is added to the Insurance Code, to
7 read:

8 15018.5. The commissioner may, without hearing, deny an
9 application if the applicant has committed any act or been
10 convicted of a crime constituting grounds for denial of license
11 under Section 1669.

12 SEC. 14. Section 15027 of the Insurance Code is amended to
13 read:

14 15027. (a) No licensee shall, directly or indirectly, act within
15 this state as a public insurance adjuster without having first
16 entered into a contract, in writing, on a form approved by the
17 insurance commissioner and executed in ~~duplicate~~ *triplicate* by
18 the public adjuster and the insured or a duly ~~authorize~~ *authorized*
19 representative. One copy of this contract shall be kept on file by
20 the licensee, available at all times for inspection, without notice,
21 by the commissioner or his or her duly authorized representative.

22 (b) *The written contract between the licensee and the insured*
23 *shall contain each of the following:*

24 (1) *Title of "Public Adjuster Contract."*

25 (2) *The name, business name, license number, telephone*
26 *number, and address of the licensee.*

27 (3) *The name and address of the insured.*

28 (4) *A description of the loss and its location, if applicable.*

29 (5) *The name of the insurer and the policy number.*

30 (6) *The full salary, fee, commission, or other consideration the*
31 *licensee is to receive for services under the contract.*

32 (7) *A description of the services to be provided to the insured.*

33 (8) *Signatures of the licensee and the insured.*

34 (9) *The date the contract was signed by the licensee and the*
35 *date the contract was signed by the insured.*

36 (10) *Complete identification of the means by which the*
37 *licensee has satisfied the requirements of Article 4 of this*
38 *chapter.*

39 (11) *A statement of the compensation to the licensee, including*
40 *the percentage and base to which the percentage applies.*

1 You may cancel this contract, without any penalty or
2 obligation, within ~~three~~ 10 business days from the above date.

3 If you cancel, any money or other consideration paid by you
4 will be returned within 10 days following the receipt of your
5 cancellation notice, and any security interest arising out of the
6 transaction will be canceled.

7 To cancel this contract, mail or deliver a signed and dated copy
8 of this cancellation notice, or any other written notice, or send a
9 telegram to:

10
11 _____
12 (name of public adjuster)

13 at

14 _____
15 (address of public adjuster's place of business)

16
17 not later than midnight of _____

18 (Date)

19 I hereby cancel this contract _____

20 (Date)

21 _____
22 (Client's signature)

23
24 (2) The statement "WE REPRESENT THE INSURED
25 ONLY" prominently displayed in at least 10-point type.

26 (3) A provision disclosing the percentage of the insured's
27 claim, or other fee, that the licensee will charge for his or her
28 services. The licensee shall obtain the initials of the insured next
29 to this provision.

30 (4) A conspicuous statement in at least 10-point type in
31 immediate proximity to the space reserved for the client's
32 signature, as follows: "You may cancel this contract at any time
33 before midnight of the ~~third~~ 10th business day after the date of
34 this contract. See the notice of cancellation form at the end of this
35 contract for an explanation of this right."

36 ~~(e)~~

37 (g) No licensee shall knowingly make any false report to his or
38 her employer or divulge to any other person, except as he or she
39 may be required by law to do so, any information acquired by

1 him or her except at the direction of the employer or a client for
2 whom the information is obtained.

3 ~~(f)~~

4 ~~(h)~~ No licensee shall use a badge in connection with the
5 official activities of the licensee's business.

6 ~~(g)~~

7 ~~(i)~~ No licensee shall permit an employee or agent in his or her
8 own name to advertise, engage clients, furnish reports, or present
9 bills to clients, or in any manner whatever to conduct business
10 for which a license is required under this chapter.

11 ~~(h)~~

12 ~~(j)~~ Pursuant to subdivisions (a) and (c) of Section 15006, the
13 commissioner shall have the authority to enforce the provisions
14 of this chapter and prosecute violations thereunder committed by
15 unlicensed persons or entities that hold themselves out or act as
16 public insurance adjusters.

17 ~~(i)~~

18 ~~(k)~~ For purposes of this section, "business day" shall have the
19 same meaning given to that term in subdivision (e) of Section
20 1689.5 of the Civil Code, as in effect on the operative date of this
21 statute.

22 ~~(j)~~

23 ~~(l)~~ The contract and the notice of cancellation set forth in
24 paragraph (1) of subdivision (d) shall be written in the same
25 language, e.g., Spanish, as principally used in the negotiation of
26 the contract.

27 ~~(k)~~

28 ~~(m)~~ Within 10 days after a contract has been canceled, the
29 licensee shall tender to the client any payments made by the
30 client and any note or other evidence of indebtedness. The
31 licensee is not entitled to compensation for services performed
32 prior to cancellation. Any security interest shall be canceled upon
33 cancellation of the contract.

34 ~~(l)~~

35 ~~(n)~~ Notice of cancellation given by the client need not take the
36 particular form specified in paragraph (1) of subdivision (d).
37 Notice of cancellation, however expressed, is effective if it
38 indicates the intention of the client not to be bound by the
39 contract.

40 ~~(m)~~

1 (o) Cancellation occurs when the client gives written notice of
2 cancellation to the licensee at the address specified in the
3 contract.

4 ~~(n)~~

5 (p) Notice of cancellation, if given by mail, is effective when
6 deposited in the mail properly addressed with postage prepaid.

7 ~~(o)~~

8 (q) Until the licensee has complied with this section, the client
9 may cancel the contract.

10 ~~(p)~~

11 (r) *The contracts shall be executed in triplicate. The licensee*
12 *shall retain one original contract, and shall provide the insurer*
13 *and the insured each with an original contract.*

14 (s) The licensee shall provide the client with two completed
15 copies of the contract and notice of cancellation at the time the
16 client signs the contract.

17 ~~(q)~~

18 (t) Any confession of judgment or waiver of the provisions of
19 this chapter shall be deemed contrary to public policy and shall
20 be void and unenforceable.

21 ~~(r) The changes made to this section by the act that added this~~
22 ~~subdivision shall apply only to contracts entered into on and after~~
23 ~~January 1, 2005.~~

24 (u) *Prior to the signing of the contract, the licensee shall*
25 *provide the insured with a separate printed disclosure document*
26 *that bears the name and license number of the licensee and does*
27 *each of the following:*

28 (1) *States that the insured is not required to hire a public*
29 *adjuster.*

30 (2) *States that the insured has the right to communicate*
31 *directly with the insured's attorney, the insurer, the insurer's*
32 *adjuster, and the insurer's attorney, or any other person*
33 *regarding the settlement of the insured's claim.*

34 (3) *States that the public adjuster is not a representative or*
35 *employee of the insurer.*

36 (4) *States that the salary, fee, commission, or other*
37 *consideration is to be paid by the insured, not by the insurer.*

38 (5) *Identifies completely the means by which the public*
39 *adjuster satisfied his or her continuing education requirement.*

1 (v) *The licensee shall give the insured written notice of each of*
2 *the following:*

3 (1) *That the insured has the right to rescind the contract*
4 *within 10 business days after the contract was signed.*

5 (2) *That if the insured exercises the right to rescind the*
6 *contract, the rescission must be in writing and mailed or*
7 *delivered to the licensee at the address in the contract.*

8 (3) *That if the insured exercises the right to rescind the*
9 *contract, anything of value given by the insured under the*
10 *contract will be returned to the insured within 10 business days*
11 *after the receipt by the licensee of the cancellation notice.*

12 (w) *Within 10 business days after the time to rescind has*
13 *elapsed, the licensee shall give written notice to the insurer, its*
14 *adjuster, or its attorney that the licensee has entered into a*
15 *written contract with the insured.*

16 (x) *If the licensee misrepresents or conceals a material fact*
17 *from the insured prior to execution of the contract, the insured is*
18 *entitled to rescind the contract without time limit.*

19 SEC. 15. Section 15027.1 of the Insurance Code is amended
20 to read:

21 15027.1. (a) Notwithstanding subdivision~~(e)~~ (e) of Section
22 15027, a licensee shall not solicit a contract of engagement under
23 this chapter until seven *calendar* days have elapsed~~since~~ *after*
24 the occurrence of a disaster.

25 (b) Subdivision (a) shall not apply if the licensee is contacted
26 directly by the insured or the insured's representative.

27 (c) For the purposes of this section, "disaster" means a
28 loss-producing event that damages or destroys more than 25
29 dwellings, or a "disaster" as that term is defined in subdivision
30 (b) of Section 1689.14 of the Civil Code.

31 SEC. 16. Section 15027.5 is added to the Insurance Code, to
32 read:

33 15027.5. Any person acting as a public adjuster who has
34 executed a contract as described in Section 15027 is the agent of
35 the insured. The public adjuster shall make a written disclosure to
36 all other parties to the contract of any fees or compensation
37 received by or payable to the adjuster from any other party
38 connected to the claim adjustment, including contractors,
39 insurers, agents, and other vendors. The written disclosure shall
40 be made immediately upon execution of the contract as described

1 in Section 15027. The insured may rescind the contract if the
2 adjuster fails to make any required disclosure, or if the adjuster
3 has a dual agency.

4 SEC. 17. Section 15028.7 is added to the Insurance Code, to
5 read:

6 15028.7. (a) A public adjuster who receives, accepts, or holds
7 any moneys on behalf of an insured towards the settlement of a
8 claim for loss or damage shall deposit the moneys in an interest
9 bearing escrow or trust account in a financial institution which is
10 insured by an agency of the federal government in the adjuster's
11 home state.

12 (b) All funds held in an escrow or trust account and interest
13 accruing thereon shall be the property of the insured and shall be
14 held pursuant to a written agreement signed by the insured and
15 the public adjuster.

16 (c) A public adjuster who receives any fiduciary funds shall,
17 within 10 business days of receipt, deposit the funds in the
18 escrow account and provide a written statement to the insured
19 showing the amount of funds received and deposited in escrow.

20 SEC. 18. Section 15039.5 is added to the Insurance Code, to
21 read:

22 15039.5. The commissioner may, without hearing, suspend or
23 revoke a license issued under this chapter if he or she determines
24 that the licensee has committed any act or crime constituting
25 grounds for denial of license under Section 15018.5.

26 SEC. 19. Section 15040 of the Insurance Code is amended to
27 read:

28 15040. The record or conviction, or a certified copy thereof,
29 shall be conclusive evidence of the conviction as that term is
30 used in this article or *in* Section 15018 *or* 15018.5.

31 A plea or verdict of guilty or a conviction following a plea of
32 nolo contendere is deemed to be a conviction within the meaning
33 of this article or *of* Section 15018 *or* 15018.5. The commissioner
34 may order the license suspended or revoked, or may decline to
35 issue a license, when the time for appeal has elapsed, or the
36 judgment of conviction has been affirmed on appeal or when an
37 order granting probation is made suspending the imposition of
38 sentence, irrespective of a subsequent order under the provisions
39 of Section 1203.4 of the Penal Code allowing that person to
40 withdraw his or her plea of guilty and enter a plea of not guilty,

- 1 or setting aside the verdict of guilty, or dismissing the accusation,
- 2 information, or indictment.

O